Supreme Court of the United States

OCTOBER TERM 1941.

No. ——

S. J. SUMMERS, C. E. GAMBLE,
MRS. A. C. ASTON, ET AL.,
PETITIONERS,

vs.

CLARE PURCELL, WILLIAM T. WATKINS,
J. LOYD DECELL, ET AL.,
RESPONDENTS.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

THE OPINION OF THE COURT BELOW.

The opinion of the Circuit Court of Appeals for the Fourth Circuit is to be found in 126 F. 2d 390.

II.

JURISDICTION.

1. The statutory provision believed to sustain jurisdiction is Judicial Code, Sec. 240 (a), as amended; U. S. C. Title 28, Sec. 347 (a).

2. The date of the decree to be reviewed is March 9, 1942 (R. 81).

III.

STATEMENT OF THE CASE.

A statement of the case is to be found under heading "C" of the Petition. In the interest of brevity, that statement is not now repeated, but is referred to, with the request that it be considered as here incorporated by reference.

IV.

SPECIFICATION OF ERRORS.

The errors which it is desired to specify are found in paragraphs 3, 4, 5, 6, 7, 8 and 9 of heading "D" in the Petition. Again, in the interest of brevity, we refer thereto and desire, by such reference, to be permitted to incorporate them at this point.

V.

ARGUMENT.

1. *Summary of the Argument.*

Point A. The established principles which determine whether or not a case presents the required jurisdictional amount in controversy.

Point B. The value of the local congregational properties in South Carolina, in connection with which suits are now pending in South Carolina State Courts, cannot be considered in determining whether the required amount is in controversy.

Point C. The Methodist Church, a voluntary association, is incapable of owning property. The value of so called "Church Properties" cannot furnish the required jurisdic-

tional amount in controversy. In order to maintain a suit involving "Church Properties", there must be alleged some judicially cognizable interest in the property, and the property involved must be pointed out with reasonable certainty. Here neither of these is done.

Point D. The allegations that the use by petitioners of the name "Methodist Episcopal Church, South" casts a cloud on the title to millions of dollars of undesignated property cannot support jurisdiction.

Point E. A religious society has no "good will" in the legal sense of that term, cannot be subjected to unfair competition, and the allegations of confusion amid persons who may desire to join a Church and of confusion amid peoples who may desire to make a donation, cannot support jurisdiction.

Point F. The allegations that the use of the name "Methodist Episcopal Church, South", has a value in excess of $3,000.00, and that its use by petitioners will cause damage to the respondent Bishops in excess of $25,000.00, cannot sustain jurisdiction.

Point G. This proceeding, in the final analysis, raises a pure ecclesiastical question, over which no court, State or Federal, can take jurisdiction. Jurisdiction exists only if a solution of the ecclesiastical question is necessary to determine some property right, alleged in the Complaint.

2. *Point A.*

In this proceeding three things are sought: *first*, a declaratory judgment that there has been a legal and valid union between the three churches; *second*, a declaratory judgment that the new Church has succeeded to all the properties and rights of the Methodist Episcopal Church, South, including the exclusive right to the use of its name; and *third*, an injunction against defendants and others similarly situated from using the names "Methodist Episcopal Church, South" or "Southern Methodist Church."

The established principles which determine whether the requisite jurisdictional amount is present in a case of this character, are two in number: *first,* the right which the plaintiff seeks to protect is the matter in controversy; *second,* that right must be one of property, and such that its value may be proved and calculated in the ordinary mode of a business transaction.

The following sustain the first principle: *Hunt* v. *N. Y. Cotton Exchange,* 205 U. S. 322, 51 L. Ed. 821, 27 Sup. Ct. 529; *Bitterman* v. *L. & N. R. Co.,* 207 U. S. 205, 52 L. Ed. 171, 28 Sup. Ct. 91, 12 Ann. Cas. 693; *Glenwood Light and Water Co.* v. *Mutual Etc. Co.,* 239 U. S. 121, 60 L. Ed. 174, 36 Sup. Ct. 30; Dobie, Fed. Procedure, p. 133, et seq.

The following sustain the second principle: *Barry* v. *Mercein,* 5 How. 103, 12 L. Ed. 70; *Perrine* v. *Slack,* 164 U. S. 452, 41 L. Ed. 510, 17 Sup. Ct. 79; *Horn* v. *Mitchell,* 243 U. S. 247, 61 L. Ed. 710, 37 Sup. Ct. 293, *Farmers & Merchants Bank, etc.* v. *Federal Reserve Bank of Richmond,* 274 Fed. 235; *National Lock Co.* v. *Chicago Regional Labor Board,* 8 Fed. Sup. 820.

The alleged rights which the respondent Bishops seek to protect are: first, the right of The Methodist Church, as successor to the Methodist Episcopal Church, South, to all the properties and rights of the latter; and second, the right of The Methodist Church to the exclusive use of the names "Methodist Episcopal Church, South" and "Southern Methodist Church".

The Complaint, when the nature of a religious society is considered, shows that the Methodist Episcopal Church, South, was possessor of no property rights to which The Methodist Church could succeed and that the Methodist Church is incapable of succeeding to any such rights. The property rights are not alleged, hence did they exist. They cannot be measured in terms of money, and no monetary value can be placed on the name of a religious society or the use thereof.

3. *Point B.*

The Circuit Court of Appeals adopted our view that there was a sufficient identity between the parties to the eight State Cases and the parties to the instant case to bring into play the rule that the jurisdiction of the respective State Courts having attached to the specific *res* in each of the state suits, a Federal Court is precluded from exercising its jurisdiction over those respective properties to defeat or impair the State Court's jurisdiction (R. 79). *Kline* v. *Burke Construction Co.*, 260 U. S. 226, 67 L. Ed. 226, 43 Sup. Ct. 79, 24 A. L. R. 1077 is the great authority on this point.

Since a Federal Court can exercise no jurisdiction over these eight properties (which are the only properties that might even remotely be said to be pointed out with reasonable certainty in the Complaint) it follows, apart from other considerations herein set forth, that the value of those properties cannot be considered in determining the question whether the required jurisdictional amount is in controversy.

4. *Point C.*

A denominational church, that is, the great unincorporated religious society, is nothing more than a voluntary association and is, accordingly, incapable as such of owning property—54 C. J. 47, 7 C. J. S. 38, and cases there cited—or of suing or being sued—7 C. J. S. 82. The statements just made, of course, do not apply, if there be a Statute to the contrary. Here there is no such statute. To the same effect see Zollman, American Church Law, p. 503.

The religious societies known as "The Methodist Church" and the "Methodist Episcopal Church, South", are incapable of owning property, have never owned property and unless their nature be completely altered will never own any property. Although respondent Bishops allege the owner-

ship by these religious societies of vast amounts of properties, they recognize the truth of this statement and correctly allege that these "Church Properties" are owned by trustees, incorporated boards and other legal instrumentalities. The terms under which those vested with legal title hold, manage and control the several properties and the persons who are the beneficiaries thereof and who, accordingly, have an equitable interest therein, can be ascertained only by reference to the trust instruments, the charters or the documents setting up the instrumentalities.

The Complaint does allege the terms of a trust under which most of the houses of worship are alleged to be held (R. 52). Save for this allegation, the Complaint gives no indication of the nature of any of the charters, trusts or instruments vaguely referred to.

One may not institute a suit unless he has a judicially cognizable interest in the subject matter thereof.

The Bishops, as members of the religious society, have an interest in the question of the name, and if a dispute concerning the right to use it raises the required jurisdictional amount, the Federal Court has jurisdiction over that subject matter. To that point, we shall shortly address ourselves.

But, in the other subject matter of the suit,—the "Church Properties" of the Methodist Episcopal Church, South,—the Bishops allege no judicially cognizable interest whatsoever. They do not allege that they, or any one of them, is a trustee of any trust, a director or official of any corporation, or a member of the governing body of any instrumentality. They do not allege that they, or any one of them, is a beneficiary of any "Church Property" whatsoever, or entitled to the use thereof.

The Court will take judicial knowledge of the fact that many of these so called "Church Properties" are held under very specific terms and for limited purposes and the affidavit of Bishop Denny (R. 61) shows this in some detail.

The Circuit Court of Appeals said (R. 76):

> "* * * plaintiffs (i. e. respondent Bishops) contend that, while legal title to the properties is held by the boards, trustees, commissions and corporations, the right of beneficial use of the properties is in the church organization for the religious and charitable purposes which it has undertaken, and that the right of control over them depends upon the validity of the union into which the three churches have entered, since the trustees, boards, commissions and directors of corporations are appointed by the Church through its proper governing agencies" (R. 76).

We do not find such allegations in the Complaint. The lack of these allegations is controlling, but even if the Complaint can be considered to make these allegations, the allegations of themselves are unsound. The manner of appointing trustees, boards, commissions and directors of corporations is to be ascertained by the instrument establishing the trust, board and commission and by the charter of the corporation, and if respondent Bishops had desired to make any such allegations as this, they would have been required at the least to designate the trust, board, commission or corporation which they had in mind.

The fact that a member of a religious society who wishes to institute suit for the determination of some ecclesiastical question upon which property rights rest, must show an interest in the property of a nature that the Court can consider is fully demonstrated by the cases of *Helm* v. *Zarecor*, 222 U. S. 32, 56 L. Ed. 77, and *Smith* v. *Swormstedt*, 16 How. 88, 14 L. Ed. 942. The Circuit Court of Appeals found that the decisions in those cases authorized a suit of the character of the instant case. In so finding we respectfully contend that it misinterpreted those decisions. The latter case grew out of the division of the "Methodist Episcopal Church in America" into the "Methodist Episcopal Church" and the "Methodist Episcopal Church, South". It involved a par-

ticular fund known as the "Book Concern" which, under the Plan of Division, was to be divided. Suit was brought by certain Southern Commissioners, expressly authorized to take control of that portion of the fund which should go to the Southern Church, and by certain Southern ministers who had personal proprietary and equitable interests in the fund. It was brought against representatives of the Northern Church, who had the fund in their control, and against certain ministers of the Northern Church who had personal proprietary and equitable interests in the fund. The former case specifically involved the right to control, manage and use the properties of "The Board Publication of the Cumberland Presbyterian Church", a Tennessee corporation. It was brought by certain members of the Presbyterian Church in the United States of America, suing for themselves and all other members of the Church *who claimed as such an interest* in the corporate property, against persons who claimed the legal right of possession of the corporate property, and against the corporation itself, for the purpose of removing a cloud upon that property occasioned by virtue of that claim, and for the control of the corporation itself. The instant case is in no sense analogous to either of these cases.

We subsequently refer at some length to the case of *Fussell* v. *Hail*, 233 Ill. 73, 84 N. E. 42, which is the only case we have been able to find that is at all analogous to the instant proceeding. There the Bill of Complaint was dismissed and, in part, the Court said:

> "There is no statement whereby it appears that the complainants, or any of those they represent, have an interest in any property which will be in any way affected by the proposed union".

5. *Point D.*

Insofar as this suit has a property aspect, it is akin to a proceeding to remove a cloud from title. Indeed, it is alleged

that that which petitioners seek to do "would cast a cloud upon the title to every piece of property held in the name of, or by trustees, for the use of the Methodist Episcopal Church, South, at the time of said Union" (R. 54). But under the allegation of the Complaint, the value of all this undesignated property cannot be considered in ascertaining the existence of the jurisdictional amount, not only for the reasons given in the section above, but also, insofar as the proceeding would otherwise seek to remove clouds on titles, it fails, because in such proceedings, it is necessary not only to aver an interest in the property,—51 C. J. 217—, but it is also necessary that there be pointed out with reasonable certainty the property involved,—51 C. J. 227.

The Complaint points out no property with reasonable certainty, and certain it is that the only properties which are pointed out in any manner whatsoever are the eight pieces of South Carolina real estate, which are the *res* of the eight cases pending in South Carolina courts.

6. *Point E.*

Respondent Bishops have attempted to sustain jurisdiction on allegations of irreparable injury to The Methodist Church, injury to its "good will", unfair competition and confusion amid peoples who may desire to join a church or make a donation thereto.

The mere allegation of an "irreparable pecuniary injury to The Methodist Church" is meaningless from the point of jurisdiction. *Winchester Repeating Arms Co.* v. *Butler Bros.*, 128 Fed. 976.

Allegations concerning "good will" and "unfair competition" are totally out of place in this proceeding, for a religious society has no "good will" and cannot be subjected to "unfair competition". They are words which express a concept of trade, commerce and business. One of the business corporations which carries on certain of the mundane activities of the church has a good will and might

be subjected to unfair competition, but its good will may be protected, and it may be protected from unfair competition, only if the proceeding be brought by the corporation, or by one who has the right to bring suit for the benefit of the corporation.

All definitions of "good will" show that the term has no meaning save as used in connection with commercial transactions. *Metropolitan Bank* v. *St. Louis Dispatch Co.*, 149 U. S. 436, 37 L. Ed. 799, 13 Sup. Ct. 944; In re *Borden's Estate*, 159 N. Y. S. 346; 24 Am. Jur. 807.

Similarly "unfair competition" has no meaning outside the commercial field. 26 R. C. L. 875.

Allegations of confusion amid peoples who may desire to join a Church and of those who may desire to make a contribution to a Church, raise simply speculative and conjectual matter, and the question of the jurisdictional amount in controversy cannot be determined by speculation or conjecture. *Farmers and Merchants Bank* v. *Federal Reserve Bank of Richmond, supra; Crescent Planing Mill Co.* v. *Mueller* (Mo. 1938) 117 S. W. 2d 247.

7. *Point F.*

The Circuit Court of Appeals expressly refers to the allegations that the use of the name "Methodist Episcopal Church, South" has a value in excess of $3,000.00 and that the damage which will be caused respondent Bishops by the use by petitioners of that name exceeds $25,000.00 (R. 78). Those allegations are, however, meaningless from the point of jurisdiction, as is clearly shown by *Winchester Repeating Arms Co.* v. *Butler Bros., supra.* In that case plaintiff sought to protect the name "Winchester", which they alleged was worth in excess of $5,000.00. The only present or prospective damage alleged was that prospective customers would be deceived and that the reputation of plaintiff and its gun would "suffer irreparable damage". The proceeding was dismissed, the Court saying:

"Had the bill charged that the tradename would be destroyed, then the value of the same would be the amount in controversy. As the matter now stands, the only amount in controversy involved is the amount of complainant's damages, present and prospective, and they are not stated. I think it clear that the bill shows no jurisdiction in this court".

As the matter stands in the instant case, the allegations are a cloud on title to properties that are not pointed out and in which respondent Bishops allege no interest, injury to good will, unfair competition, loss of possible membership, loss of possible contributions, and irreparable pecuniary injury.

In connection with the name, there is this very unusual feature. There is no allegation that The Methodist Church makes, or is making any use of the name "Methodist Episcopal Church, South". If an examination be made of the many proceedings in which associations and corporations have successfully sought to protect a name, it will be found that the name sought to be protected was the name being used, or one so similar thereto as to be confused therewith, or the name by which the association or corporation was generally and popularly known. An instance of the latter is found in *Philadelphia Trust, Safe Deposit and Insurance Company* v. *Philadelphia Trust Co.*, 123 Fed. 534.

The Plan of Union, which we take it is the charter of The Methodist Church, and which is to be found in the manuscript record, shows the name "Methodist Episcopal Church, South" to have been abandoned.

The name of the new Church is "The Methodist Church" and, according to the theory of respondent Bishops, the three constituent churches went out of existence when it came into existence. The Court will take judicial knowledge of the fact that there are dozens of religious societies in this country using the name "Methodist" and this new Church has no exclusive right thereto. The Court will take judicial knowledge of the fact that the term "Methodist" is

of a type which precludes any group from obtaining the exclusive right thereto. It is a term which for one hundred and fifty years and more has designated those millions of persons who accept the views of John Wesley concerning the relationship which exists between God and man. In like manner, the word "Episcopal", which is not even used by The Methodist Church, is not subject to the exclusive control of any association.

8. *Point G.*

Since no property rights of which the Court may take cognizance are here alleged and sought to be protected, this proceeding resolves itself solely into an attempt by respondent Bishops to obtain a decree from the civil court upon a purely ecclesiastical question—was the Union validly adopted?

While we believe that the chief doctrine of the frequently cited case of *Watson* v. *Jones,* 13 Wall, 679, 20 L. Ed. 677, is not sound, yet the soundness of the statement in that case to the effect that a civil court has no jurisdiction to consider an ecclesiastical matter, save as civil property rights depend thereon, has, we believe, never been questioned, and cannot be questioned.

The great decision in this country, however, on this point is *Fussell* v. *Hail, supra,* wherein certain members of the Cumberland Presbyterian Church sought to enjoin the General Assembly of that Church from attempting to consummate what they alleged to be a proposed unconstitutional merger of that Church into the Presbyterian Church in the United States of America. The bill alleged that the Cumberland Church owned a large amount of property which would be injuriously affected, and in other respects was quite similar to the Complaint in the instant case. The proceeding was dismissed and the language of the court is so pertinent that we take the liberty of quoting it.

"A court of chancery has no jurisdiction of the subject-matter of this controversy. The object of the bill is to have a court of chancery, by its process, assume control of the action of an ecclesiastical tribunal, declare the extent of its jurisdiction, examine the regularity of its proceedings, and revise its judgments. The civil courts deal only with civil or property rights. They have no jurisdiction of religious or ecclesiastical controversies. Our constitution says: 'The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed.' Such freedom of religious profession and worship cannot be maintained if the civil courts may interfere in matters of church organization, creed, and discipline, construe the constitution, canons, or rules of the church, and regulate and revise its trials and the proceedings of its governing bodies. (Citing cases.) *The civil courts afford no remedy for an abuse of ecclesiastical authority which does not violate a civil or property right.* * * *

"The church, as such, owns no property. It has never been incorporated, but is a voluntary association. There are a large number of churches and congregations for whose use property is held in trust, and the bill mentions a number of boards which have property under their control and management. Whether or not these boards are incorporated, except the James Millikan University, which is an Illinois corporation, or *in what way or subject to what trusts the property is held, is not alleged,* except that the property is held for the teaching and preaching of the doctrines contained in the Confession of Faith of the Cumberland Presbyterian Church. There is no allegation setting forth any deed, devise, declaration of trust or gift of any property, or any clause therein or the terms thereof, whereby it can be seen that the proposed union would defeat its purpose. *There is no statement whereby it appears that the complainants, or any of those they represent, have an interest in any property which will be in any way affected by the proposed union.* It is not alleged that any action is proposed to be taken which will interfere with the management and control of the property of the various churches, boards, schools, and

other institutions of the Cumberland Presbyterian Church by the boards of trustees or other managers now in control thereof, and of their successors appointed in accordance with the trusts upon which they are held. We do not find that any property right is directly involved, or can be directly affected by the proposed action of the General Assembly which it is sought to enjoin." (Italics supplied).

VI.

CONCLUSION.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers in order that the error of the Circuit Court of Appeals in holding that the District Court had jurisdiction to consider the Complaint in the instant case may be corrected, and that a Writ of Certiorari should be granted, and that this Court should review the decision of the Circuit Court of Appeals and finally reverse it.

Respectfully submitted,

COLLINS DENNY, JR.,
C. T. GRAYDON,
Counsel for Petitioners.

(23)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. [redacted] 117

S. J. SUMMERS, ET AL,
Petitioners for Certiorari

VS.

CLARE PURCELL, ET AL,
Respondents to Petition for Certiorari

RESPONSE OF CLARE PURCELL, ET AL, TO PETITION FOR CERTIORARI WITH SUPPORTING BRIEF

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SUBJECT INDEX

A RESPONSE TO PETITION FOR WRIT OF CERTIORARI

B ARGUMENT

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 1282

S. J. SUMMERS, ET AL,
Petitioners for Certiorari

VS.

CLARE PURCELL, ET AL,
Respondents to Petition for Certiorari

RESPONSE OF CLARE PURCELL, ET AL, TO PETITION FOR CERTIORARI WITH SUPPORTING BRIEF

PARTIES TO LITIGATION

S. J. Summers, C. E. Gamble, Mrs. A. C. Ashton, Rev. C. P. Chewning, J. M. Hudgins, L. A. Manning, Jr., G. G. Pike, Mrs. S. J. Summers, and Miss Mildred Hudgins, petitioners in this court, were defendants in the United States District Court for the Eastern District of South Carolina, being sued therein as members and representatives of a class known as the "South Carolina Conference of the Methodist Episcopal Church, South," an unincorporated religious society, and were appellees in the Circuit Court of Appeals.

Clare Purcell, William T. Watkins, J. Loyd Decell, Hoyt M. Dobbs, U. V. W. Darlington, Paul B. Kern, William W. Peele and Arthur J. Moore, respondents here, were the

plaintiffs in the District Court, suing as Bishops of The Methodist Church and as members of said church and, as such members, suing as representatives and on behalf of the class composed of all of the members of said church, and were appellants in the Circuit Court of Appeals.

OPINIONS BELOW

The opinion and order of the District Court dismissing plaintiffs' action therein for lack of jurisdiction, dated July 25, 1940, is correctly set forth in the Transcript of Record (R. 24-44) and is published in 34 Federal Supplement, 421. The opinion and order of the Circuit Court of Appeals reversing the judgment of the District Court and remanding the cause, dated March 9, 1942, is correctly set out in the Transcript of Record (R. 74-81).

QUESTION INVOLVED

The sole question here involved is whether the District Court erred in sustaining the defendants' plea to the jurisdiction and in dismissing plaintiffs' action on account of lack of the requisite jurisdictional amount involved or on account of the pendency of certain suits in the Court of Common Pleas of the State of South Carolina.

Relevant portions of plaintiffs' complaint in the District Court, as amended, are set out in pages 3-7 and in pages 52-56 of the Transcript of Record. Defendants' plea to the jurisdiction is correctly set out in the Transcript of Record (R. 21-23).

PRELIMINARY STATEMENT OF THE MATTER INVOLVED

A few months prior to the union of the Methodist Episcopal Church, the Methodist Episcopal Church, South, and

the Methodist Protestant Church, which was finally consummated at a Uniting Conference of the three uniting churches held on May 10, 1939, thus forming The Methodist Church, a schism arose between certain members of a local church of the Methodist Episcopal Church, South, at Turbeville, South Carolina, known before the union as the "Pine Grove Methodist Episcopal Church, South," who were opposed to the union and intended to refuse to adhere to the united church, upon the claim that the proposed union would be invalid, and those members of the local church who intended to abide by the action of the churches if union should be consummated and to adhere to the united church. The faction opposed to the proposed union, and in anticipation of its consummation, on the 24th day of April, 1939, caused a deed to be executed attempting to alienate the title to the local church property from the trustees who then held the legal title to it (Paragraph 10 of the complaint in the Pine Grove case; R. 12, 13) with the intent of unlawfully taking sole and exclusive possession of the local church property and to exclude those who adhered to the united church from access thereto and the use and enjoyment of it as a place of divine worship. (Paragraph 13 of the complaint in the Pine Grove case; R. 15.) Those members of the church who intended to adhere to the united church, contended that said alienating deed was unauthorized, was a violation of the trust under which the property was held, and was an unlawful plan and attempt to divert said property from its ownership by the Methodist Episcopal Church, South, and The Methodist Church, its lawful successor in interest. (Par. 14 of the complaint in the Pine Grove case; R. 16, 17.) On the same day on which this alienating deed was made, certain representatives of the faction which caused said alienating deed to be made, served notice on the pastor regularly and duly assigned to said church that they were assuming control and direction of such church property, and warning him not to

trespass upon the church property. (Par. 12 of the complaint in the Pine Grove case; R. 14.) In this situation, those members of the local church who adhered to the united church, on May 29, 1939, filed a bill in the appropriate Court of Common Pleas of South Carolina to cancel the alienating deed, to enjoin the defendants from interfering with the religious services of the pastor duly appointed to said church and to enjoin the use of the name "Methodist Episcopal Church, South," as the name of a church independent of and not affiliated with The Methodist Church, the successor of the Methodist Episcopal Church, South. This action is conceded to be typical of all of the cases pending in the state courts of South Carolina. The plaintiffs in the Pine Grove case are nine in number. Seven of them hold their membership in the Pine Grove Church; three were trustees of the local church property; three were stewards and therefore officers of the local church. One was a plaintiff because of his position of District Superintendent of the district in which the local church is located, and one is a plaintiff by virtue of his position as "preacher in charge of the Pine Grove Methodist Church of Turbeville, South Carolina." These plaintiffs sued on "behalf of themselves and all other members of The Methodist Church similarly situated who have a common or general interest in the subject matter of this suit."

The defendants in the Pine Grove case (the State case) are six persons sued "as members or former members of Pine Grove Methodist Church at Turbeville, South Carolina, in their own right and as representing all other members similarly situated."

The object of the Pine Grove case is (1) to cancel the alienating deed as a cloud upon the title to the local church property, (2) to enjoin interference with the religious ser-

vices at the local church of the duly accredited pastor of The Methodist Church, and (3) to enjoin the defendants from the use of the name "Methodist Episcopal Church, South," or any other name of like import.

The plaintiffs in the Federal suit are all of the members of The Methodist Church as a class, represented by the eight Bishops of the Southeastern Jurisdiction of The Methodist Church. Included in this class are multiplied millions who were never members of the Methodist Episcopal Church, South, but who, by virtue of the union, became members of the united church by reason of their former membership in the Methodist Episcopal Church, commonly known as the Northern Methodist Church, and the Protestant Methodist Church.

The defendants in the Federal suit are not the same persons named as defendants in the State suit nor do they belong to the same class. They are sued as members of a class composed of the membership of the "South Carolina Conference of the Methodist Episcopal Church, South," an unincorporated religious society which did not exist at the time of the filing of the Pine Grove case, formed for the purpose of organizing, propagating and maintaining a church or religious society independent of The Methodist Church, under the name "Methodist Episcopal Church, South," upon the contention that the union of the churches was not valid, and that this religious society organized by them is the true and original Methodist Episcopal Church, South, not affected by the union of the churches, and as such, is entitled to the ownership and beneficial use of all of the properties owned by the Methodist Episcopal Church, South, at the time of the union.

The primary purpose, subject matter and object of the Federal suit is to obtain a binding declaration as to the

rights, duties and obligations of all members of The Methodist Church, or former members of the Methodist Episcopal Church, South; to prevent a multiplicity of suits in reference to local properties scattered over a wide area, and ~~to prevent, by injunctive relief,~~ to deter the filing of further cases by the dissident group composed of the members of the "South Carolina Conference of the Methodist Episcopal Church, South," or the use of the name "Methodist Episcopal Church, South," in their efforts to thwart the purposes of the union of the churches by denying its validity and legal effects.

The right involved in the Federal case is the right of The Methodist Church to own, manage, control and apply to its religious purposes the property owned by the Methodist Episcopal Church, South, at the time of union, alleged, in good faith, to have had a value at the time of union of $400,000,000; to own, manage, control and apply to its religious purposes the aggregate properties of the united church, alleged to be of a value of $656,000,000; to protect its property right in the name of one of its constituent churches and to prevent its unauthorized use by an organized group of dissenters in derogation of its property right to such name and in support of its claim that the union of the churches was invalid.

After the filing of the Pine Grove case in the Court of Common Pleas of South Carolina, a mass meeting of those dissenting from the action of the churches in uniting was held at Columbia, South Carolina, in January, 1940, and adopted a provisional plan of organization for the perpetuation of the Methodist Episcopal Church, South, "independent of any other religious society" under the name "South Carolina Conference of the Methodist Episcopal Church, South," and on June 7, 8, and 9, 1940, held a first meeting of said conference for the avowed purpose of organizing, maintaining and extending the membership of a church

or religious society, not affiliated with and independent of The Methodist Church, upon the claim and contention that the union of the Methodist Episcopal Church, South, with the other two uniting churches was invalid and that the Methodist Episcopal Church, South, still existed as a separate religious society unaffected by the actions taken by the uniting churches for effecting the union.

Following these meetings the dissension spread, resulting in the making of alienating deeds and threatened interferences with the religious services in a number of other local churches of the denomination, necessitating the filing of other suits in the state courts of South Carolina, of which the Pine Grove case is typical.

In this situation, and the courts of the State of South Carolina being without authority to grant declaratory judgments, the respondents here filed their suit for a declaratory judgment pursuant to the Federal Declaratory Judgment Act of June 14, 1934 (U. S. C. Title 28, Section 400) the nature, parties and objects of which are hereinabove set out, predicating federal jurisdiction upon (a) diverse citizenship, (b) the existence of an actual controversy and (3) the necessary jurisdictional amount.

The District Court, without consideration of the merits and the exercise of discretion in the grant of a declaratory judgment, dismissed the complaint upon the sole ground that the pendency of the cases in the state courts deprived the Federal Court of jurisdiction. On appeal the Circuit Court of Appeals reversed the judgment of the District Court.

CONTENTIONS OF PETITIONERS FOR CERTIORARI

The petitioners, defendants in the District Court and appellees in the Circuit Court of Appeals, rely on three main

points in contending that the Circuit Court of Appeals erred in reversing the judgment of the District Court:

1. That the state cases were actions *in rem* and the federal court could not, during the pendency of such suits, entertain any suit involving any question which was involved in the state suits.

2. That no jurisdictional amount was involved because there was no sufficient description of the properties claimed by The Methodist Church and because the Methodist Episcopal Church, South, was, and The Methodist Church is an unincorporated society and as such is incapable of owning property.

3. That the complainants have no property interest in the subject matter of the litigation.

Respondents respectfully submit there exists no ground for the grant of the Writ of Certiorari in this case:

1. There was no conflict of jurisdiction between the federal and state courts, because the parties were not the same in the federal and state courts, nor was the cause of action or the relief prayed the same.

2. Because neither the action in the federal court nor the relief prayed for impinge upon the jurisdiction or authority of the state courts to pass any order, or render or enforce any judgment necessary to the complete granting of any relief prayed for in the state cases and any possible encroachment on the jurisdiction of the state courts is precluded by the terms of the judgment of the Circuit Court of Appeals.

3. Because no other adequate remedy than that sought in the federal case was available to respondents, the state courts of South Carolina being without the power to grant the relief of a declaration of their rights prayed for in the federal court.

4. Because a reversal of the judgment of the Circuit Court of Appeals and the consequent affirmance of the judgment of the District Court would nullify the purpose of the Declaratory Judgment Act of Congress to settle the controversy and avoid a multiplicity of suits.

5. Because the reversal of the judgment of the Circuit Court of Appeals and the consequent affirmance of the judgment of the District Court would amount to a holding that the members of a local church of a connectional denomination cannot appeal to a state court to settle a local controversy between two factions in their local church affecting only local property without binding all members of the denomination, including non-residents of the particular state in which the action is filed, of their right to have a declaration of their rights in the federal courts.

6. Because the state courts cannot deprive citizens of other states from having a mere declaration of their rights under the Declaratory Judgment Act of Congress, especially when the same may be had without coercive relief.

7. Because the prayers for injunctive relief in both the state and federal cases are actions *in personam* of which the state and federal courts have concurrent jurisdiction.

8. Because it does not appear that the Circuit Court of Appeals decided the case not in accord with any applicable

decision of this court; contrary to any statute or applicable decision of the courts of South Carolina, or that any other ground exists, recognized by this court as a reason for the grant of the Writ of Certiorari.

WHEREFORE, respondents respectfully submit that the judgment of the Circuit Court of Appeals was correct; that no sufficient ground for the granting of the Petition for Certiorari is assigned, and that the petition therefor should be denied.

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